

Chief Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CR06-157 MJP
)	
v.)	
)	[PROPOSED]
HENRY C. ROSENAU,)	ORDER CONTINUING
)	TRIAL
)	
Defendant.)	
_____)	

This matter having come on before the undersigned Court on motion of the Government for a continuance of the trial date,

Having considered the files and records herein, the Government's Motion and facts contained therein,

and Title 18 United States Section 3161(h) which set forth periods of excludable time, including:

(3)(A) Any period of delay resulting from the absence of unavailability of . . . an essential witness.

(7)(A) Any period of delay resulting from a continuance granted . . . or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

1 The Court further considered Title 18 USC § 3161, subsection (7)(B) listing
2 non-exclusive factors which the Court may consider when determining whether to grant
3 the requested continuance, including:

4 (i) Whether the failure to grant such a continuance in the
5 proceeding would be likely to make a continuation of such
6 proceeding impossible, or result in a miscarriage of justice.

7
8 (iv) Whether the failure to grant such a continuance in a case which,
9 taken as a whole, is not so unusual or so complex as to fall within
10 clause (ii), . . . would deny . . . the attorney for the Government
11 the reasonable time necessary for effective preparation, taking into
12 account the exercise of due diligence.

13 Another period of time appropriately excluded is:

14 (8) Any period of delay, not to exceed one year, ordered by a district
15 court upon an application of a party and a finding by a preponderance of
16 the evidence that an official request, as defined by section 3292 of this title,
17 has been made for evidence of any such offense and that it reasonably
18 appears, or reasonably appeared at the time the request was made, that such
19 evidence is, or was, in such foreign country.

20 Now therefore, the Court finds:

21 Essential witnesses are unavailable to testify in the trial as currently scheduled.

22 The unavailability of several essential government witnesses is sudden, unexpected, and
23 the result of defendant's deliberate actions.

24 It is foreseeable that the essential witnesses will be made available within a
25 reasonable time period, as set forth in Title 18, United States Code, Sections 3161(8) and
26 3292, through the use of additional official requests, including through employment of the
27 Mutual Legal Assistance Treaty.

28 The Government, through the Office of International Affairs, Department of
Justice; the United States Attorneys Office, Western District of Washington; the
Homeland Security Investigations Office of Department of Homeland Security; and the
Homeland Security Attache, United States Consulate, Vancouver, British Columbia,

1 Canada, made timely official requests to appropriate Canadian authorities with criminal
2 law enforcement responsibility. Those official requests for testimony, records and
3 evidence appeared to be legally sufficient to produce the necessary testimony and
4 evidence until the defendant's actions of October 20, 2011 and October 25, 2011. The
5 defendant's actions were undertaken solely to thwart the production of witnesses and
6 evidence.

7 Now, therefore, the Court grants the Government's Emergency Motion for a
8 Continuance of the Trial Date. it is reasonable and necessary to continue the trial date in
9 this matter. The ends of justice and the interests of the public are served by the requested
10 continuance.

11 The trial was scheduled for November 7, 2011. The trial will be continued until
12 _____ and the time between November 7, 2011 and
13 _____ is excludable under the Speedy Trial Act.

14 Dated this _____ day of _____, 2011.

15
16
17 _____
18 MARSHA J. PECHMAN
19 Chief Judge, United States District Court
20
21
22
23
24
25
26
27
28